

AUG 09 2006

USSN 10/091,258
Atty. Docket No. 0213-CIP3-9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

David R. Hathaway

Appln. No.: 10/091,258

Filed: 5 March 2002

For: **COMPOSITIONS AND METHODS
FOR TREATING PERIPHERAL
VASCULAR DISEASE**

Art Unit: 1653

Examiner: Liu, Samuel W.

Atty. Docket: 0213-CIP3-9

Confirm. No.: 8234

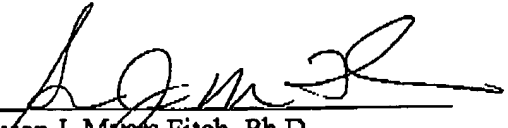
APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants respectfully request reconsideration of the Patent Term Adjustment indicated on the Notice of Allowance, mailed May 15, 2006, for the above-identified application. Applicants herein apply for an adjustment of the patent term due to examination delay. The required fee under 37 C.F.R. §1.18(e) and a statement of facts in support of this application are filed herewith. This request is being filed with the payment of issue fee. Accordingly, this application is timely filed.

The Commissioner is hereby authorized to charge payment of any additional fees or credit overpayment of any fees associated with this communication to Applicant's Deposit Account No. 010535

Respectfully submitted,
AMYLIN PHARMACEUTICALS, INC.

Dated: 9-Aug-06

By: 
Susan J. Myers Fitch, Ph.D.
Registration No. 55,477AMYLIN PHARMACEUTICALS, INC.
9360 Towne Centre Drive
San Diego, CA 92121
Telephone: 858.552.2200
Facsimile: 858.552.1936

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**STATEMENT OF FACTS UNDER 37 C.F.R. §1.705(b)(2) IN SUPPORT OF
APPLICATION FOR PATENT TERM ADJUSTMENT**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This statement of facts is being submitted in support of the application for Patent Term Adjustment (PTA) submitted herewith.

The PTA shown with the Notice of Allowance mailed May 15, 2006 is 228 days. It is respectfully suggested that the correct PTA is 430 days. Applicants' calculations for the correct PTA follow.

PTA calculation for the 10/322,839 application begins with its filing on March 5, 2002. From this date, there are two instances under 37 C.F.R. §§1.702 and 1.703 that would lead to an addition of PTA days and three instances under 37 C.F.R. §1.704 that would lead to a reduction in the PTA days. Applicants respectfully submit that the patent should have issued within 4 months of payment of the issue fee on 3 May 2005, and that it had not issued by September 3, 2005, nor had it issued as late as March 24, 2006, when a Supplemental IDS was filed. The

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CENTRAL FAX CENTER**AUG 09 2006**

In re Application of:

David R. Hathaway

Appln. No.: 10/091,258

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For: **COMPOSITIONS AND METHODS
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Art Unit: 1653

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Confirm. No.: 8234

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**FACSIMILE TRANSMITTAL COVER SHEET****Certificate of Transmission Under 37 C.F.R. 1.8**

The following documents are being submitted via facsimile transmittal:

<u>Documents(s)</u>	<u>No. of Pages</u>
Application for Patent Term Adjustment under 37 C.F.R. §1.705	1
Statement of Facts under 37 C.F.R. §1.705(b)(2) in Support of Application for Patent Term Adjustment	3
Fee Transmittal (PTO/SB/17) in duplicate	2
Part B Fee(s) Transmittal in duplicate	2
Facsimile Cover Sheet	1
Total Pages	9

Should any other fee become due or credit become payable during the pendency of these proceedings, the Commissioner is authorized to charge or credit the same to Deposit Account Number 010535.

I hereby certify that the following listed correspondence in the above-referenced application is being transmitted by facsimile to the Commissioner for Patents, Alexandria, VA to telephone number to telephone number (571) 273-8300 on this 9th of August, 2006.


Kelly B. Solomon

Office has failed to add PTA days for the 202 days between September 3, 2005 and March 24, 2006 (the filing date of the IDS, which triggered the need to request continued examination for consideration of the references).

1. Under 35 U.S.C. §154(b)(1)(A)(i) and 37 C.F.R. §§1.702(a)(1) and 1.703(a)(1), the Office must mail a notification under 35 U.S.C. §132 or a notice of allowance under 35 U.S.C. §151 not later than 14 months after the filing date of the application. Because the filing date of the application was March 5, 2002, an Office Action was due May 5, 2003. However, the first Office Action was not sent until February 26, 2004. The Office's delay in mailing this first action would add 297 days to PTA.

2. On April 5, 2002, a Notice to File Missing Parts was mailed. Applicants' response was due on July 5, 2002, but was not filed until August 5, 2002. Thus, Applicants' delay resulted in a debit of 31 days.

3. On February 26, 2004, a Non-final Office Action was mailed. Applicants' response was due on May 26, 2004, but was not filed until June 28, 2002. Thus, Applicants' delay resulted in a debit of 33 days.

4. On August 25, 2004, a Final rejection was mailed. Applicants' response was due on November 25, 2004, but a Notice of Appeal was not filed until November 30, 2004. Thus, Applicants' delay resulted in a debit of 5 days.

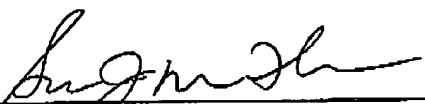
5. On February 14, 2005, the first Notice of Allowance was mailed, and Applicants' response was due May 14, 2005. Applicants paid the issue fee on May 3, 2005, and thus, Applicants' response was timely. However, on March 24, 2006, the patent had still not issued, and Applicants filed a Supplemental IDS containing references cited in a foreign application, which ultimately necessitated the filing of a request for continued examination (RCE) on April

20, 2006. According to 37 C.F.R. §1.702(a)(4), the Office is to issue a patent not later than four months after the date on which the issue fee was paid and all outstanding requirements were satisfied. Under 37 C.F.R. §§1.702(a)(4), 1.703(a)(6), and 1.703(b)(1), the Office's delay in issuing the patent (calculated from September 3, 2005 -- the deadline for the Office to issue the patent -- until March 24, 2006 -- the day Applicants filed the IDS) would add 202 days to PTA. Thus, the total PTA should be 430 days [297 days + 202 days of credited PTA days due to Office delays minus 69 days (31 days +33 days +5 days) of debited PTA due to Applicant delays].

Applicants respectfully request reconsideration of the Patent Term Adjustment shown on the issued patent.

Respectfully submitted,
AMYLIN PHARMACEUTICALS, INC.

Dated: 9-Aug-06

By: 
Susan J. Myers Fitch, Ph.D.
Registration No. 55,477

AMYLIN PHARMACEUTICALS, INC.
9360 Towne Centre Drive
San Diego, CA 92121
Telephone: 858.552.2200
Facsimile: 858.552.1936

PTO/SB/17 (01-06)

Approved for use through 07/31/2008. OMB 0651-0032

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2006☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 200.00**Complete if Known**

Application Number	10/091,258
Filing Date	5 March 2002
First Named Inventor	Hathaway, David R.
Examiner Name	LIU, Samuel W.
Art Unit	1853
Attorney Docket No.	0213-CIP3-9

RECEIVED
CENTRAL FAX CENTER**AUG 09 2006****METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 010535 Deposit Account Name: Amylin Pharmaceuticals

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Fee (\$)	Small Entity Fee (\$)
50	25
200	100
360	180
Multiple Dependent Claims	
Fee (\$)	Fee Paid (\$)

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP =		x		=	
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HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP =		x		=	
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HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(c)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 =		/ 50 =		(round up to a whole number) x		=	
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4. OTHER FEE(S)

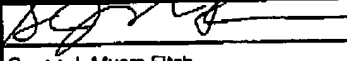
Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Patent Term Adjustment Fee under CFR 1.18(e)

Fees Paid (\$)

200.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 55,477	Telephone 858.552.2200
Name (Print/Type)	Susan J. Myers Fitch		Date 9-August-2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/17 (01-06)

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Other (e.g., late filing surcharge): Patent Term Adjustment Fee under CFR 1.18(e)

200.00

SUBMITTED BY

Signature

Registration No.
(Attorney/Agent) 55,477

Telephone 858.552.2200

Name (Print/Type) Susan J. Myers Fitch

Date 9-August-2006

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